



**NEVADA COMMISSION ON ETHICS  
EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION  
REGARDING JUST AND SUFFICIENT CAUSE**

<b>REQUEST FOR OPINION No. 06-67</b>
<b>SUBJECT: EARL MITCHELL, CONSTABLE, CLARK COUNTY, HENDERSON TOWNSHIP</b>

**A. JURISDICTION**

As the elected Clark County Constable for the Henderson Township, Earl Mitchell is a public officer as defined by NRS 281.4365. As such, the Commission has jurisdiction over the complaint.

**B. INVESTIGATIVE ACTIVITIES**

- Analyzed Request for Opinion 06-67, accompanying documents and additional information received from complainant on September 25, 2006 and November 1, 2006 (Tab B)
- Analyzed Mr. Mitchell's response to initial complaint and accompanying documents (Tab C)
- Analyzed Mr. Mitchell's response to Executive Director's notice of additional facts and issues pursuant to NAC 281.189 (Tab D)
- Analyzed related opinions previously issued by NCOE (Tab E)
- Searched Nevada Secretary of State website for previous Financial Disclosure Statements filed by Mr. Mitchell
- Reviewed Annual Financial Disclosure Statement filed by Mr. Mitchell with the Nevada Secretary of State on January 13, 2006 (Tab D)

- Reviewed Candidate Financial Disclosure Statement filed by Mr. Mitchell with the Nevada Secretary of State on May 22, 2006 (Tab D)

**C. RECOMMENDATION**

The Executive Director recommends that the Panel find just and sufficient cause **DOES EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of:

- NRS 281.571(1)(b)

**SPECIFIC REASON**

Credible evidence exists that supports a potential violation by Mr. Mitchell of the above provision of NRS Chapter 281.

**D. SUMMARY OF REQUEST FOR OPINION**

This complaint was submitted by Ronald Hilford who was Mr. Mitchell's campaign opponent in the 2006 election. The following is the relevant substance of the complaint:

Mr. Mitchell has violated NRS 281.571 by intentionally failing to report, on Financial Disclosure Statements (FDS) he has filed with the Nevada Secretary of State, the correct amount of compensation he receives for serving as the Henderson Constable. Mr. Mitchell receives \$2,418 in annual salary plus all collected fees. The combined "two income streams" constitute his total compensation of approximately \$170,000. He has been reporting approximately \$2,400 as the annual income he receives from the position on his FDS.

**E. SUMMARY OF MR. MITCHELL'S RESPONSE**

The following is the substance of Mr. Mitchell's response to the complaint:

In 1995, the Clark County Board of Commissioners set Mr. Mitchell's annual salary for serving as the Henderson Constable at \$2,050 with a cost of living adjustment of 2% yearly. State law sets the fees the Constable may collect for services rendered. The Constable's office provides Clark County with quarterly reports of fees collected. Pursuant to state law, all Clark County Constables, except the Las Vegas Constable, are "afforded" these fees. The fees are used to provide compensation to deputies and to pay other expenses such as uniforms, cell phones, mileage reimbursement and office supplies.

Mr. Mitchell has reported his annual compensation for being Constable at a "rounded" figure of \$2,300. After this complaint was filed, he checked with

Clark County and learned that his actual salary is \$2,460 annually. He then filed an amended FDS with the Secretary of State.

**F. RELEVANT STATUTES AND REGULATIONS**

(NRS Chapter 258 contains Nevada state law relating to constables.)

**NRS 258.040 Compensation.**

1. The several boards of county commissioners of each county, at the regular meeting in July of any year in which an election of constables is held, shall fix the minimum compensation of the constables within their respective townships for the ensuing term, either by stated salaries, payable monthly, semimonthly or at regular 26-week intervals, or by fees, as provided by law, or both, and they may thereafter increase or change such compensation during the term but shall not reduce it below the minimum so established.

2. If it becomes necessary to appoint a constable at any time, the board of county commissioners in the county in which such appointment is made shall fix the compensation, either by salary or by fees, as provided by law, or both, for the term for which the constable is appointed.

**NRS 281.4365 “Public officer” defined.**

1. “Public officer” means a person elected or appointed to a position which is established by the Constitution of the State of Nevada, a statute of this State or an ordinance of any of its counties or incorporated cities and which involves the exercise of a public power, trust or duty. As used in this section, “the exercise of a public power, trust or duty” means:

- (a) Actions taken in an official capacity which involve a substantial and material exercise of administrative discretion in the formulation of public policy;
- (b) The expenditure of public money; and
- (c) The administration of laws and rules of the State, a county or a city.

2. “Public officer” does not include:

- (a) Any justice, judge or other officer of the court system;
- (b) Any member of a board, commission or other body whose function is advisory;
- (c) Any member of a board of trustees for a general improvement district or special district whose official duties do not include the formulation of a budget for the district or the authorization of the expenditure of the district’s money; or
- (d) A county health officer appointed pursuant to NRS 439.290.

3. “Public office” does not include an office held by:

- (a) Any justice, judge or other officer of the court system;
- (b) Any member of a board, commission or other body whose function is advisory;

(c) Any member of a board of trustees for a general improvement district or special district whose official duties do not include the formulation of a budget for the district or the authorization of the expenditure of the district's money; or

(d) A county health officer appointed pursuant to NRS 439.290.

**NRS 281.571 Contents; distribution of forms; costs related to production and distribution of forms.**

1. Statements of financial disclosure, as approved pursuant to NRS 281.541 or in such form as the Commission otherwise prescribes, must contain the following information concerning the candidate for public office or public officer:

(a) His length of residence in the State of Nevada and the district in which he is registered to vote.

(b) Each source of his income, or that of any member of his household who is 18 years of age or older. No listing of individual clients, customers or patients is required, but if that is the case, a general source such as "professional services" must be disclosed.

**NAC 281.189 Investigation of additional issues and facts by Executive Director; provision of additional notice to subject. (NRS 281.471)**

1. The Executive Director may investigate relevant issues and facts beyond those presented in an ethics complaint in determining his written recommendation of whether just and sufficient cause exists for the Commission to render an opinion on the ethics complaint.

2. If the Executive Director includes issues and facts beyond those presented in the ethics complaint in his written recommendations which are not included in the notice issued to the subject pursuant to NAC 281.188, the Executive Director must provide additional notice to the subject of the additional issues and facts and provide the subject with the same opportunity to respond to such issues and facts that is set forth in subsection 3 of NAC 281.188.

**G. INVESTIGATION**

The materials that accompanied Mr. Hilford's complaint included a copy of a Nevada FDS filed by Mr. Mitchell with the Nevada Secretary of State on January 13, 2006 (Tab D). In the first section, "List all public offices for which this financial disclosure statement is required," "Henderson Township Constable" is shown with an "E" for elected office. In the column "Annual Compensation," the amount of \$2,300 is shown. Notwithstanding, there is no provision of NRS 281.571 that *requires* the listing of any *amounts* of income. It is unknown why the FDS form asks for amounts of income when that information is not required by statute.

The “general sources of income” section reflects “Henderson Police Department” as a source of income for Mr. Mitchell and “United States Marine Corps” as a source of income for a member of his household.

A search of FDSs scanned onto the Secretary of State website revealed a Candidate FDS filed by Mr. Mitchell on May 22, 2006 (Tab D). It lists “Henderson Township Constable” and a salary of \$2,400 in the first section.

The “general sources of income” section shows the following:

- “Henderson Police Department” as a source of income to Mr. Mitchell
- “Henderson Township Constable Office” as an additional source to Mr. Mitchell
- “Station Casinos” as a source of income to a member of his household
- “USMC” as a source of income to a member of his household

Upon learning that Henderson Township Constable was not listed as a general source of income on the January 2006 FDS, but was listed on the May 2006 FDS, NCOE staff sent Mr. Mitchell a letter to provide notice of additional facts and issues as required by NAC 281.189. That letter, dated December 5, 2006, requested Mr. Mitchell to respond to two questions (Tab D). A letter of response was received from Mr. Mitchell on December 11, 2006. Our questions and his answers are as follows:

Question No. 1

“Why was ‘Henderson Township Constable’ listed under general sources on the May statement, but not on the January statement?”

Answer

“Regarding question #1, my January report was my annual filing and I had listed my Constable position under public office and marked the ‘annual’ box as this was my annual filing as an elected official. My May report was viewed as my ‘candidate statement’ and noted the ‘candidate’ box under public office position. My attempt to include the “Henderson Township Constable Office” under general sources under this report was to show that I am currently also the Constable, while filing as a candidate, and receive income for this position.”

Question No. 2

What is the nature of the income listed as “Henderson Township Constable” under general sources on the May statement?

## Answer

Regarding Question #2, the May statement was my 'candidate status' form. The current nature of the 'Henderson Township Constable' under general sources on the May statement was merely to show as a 'candidate' that I was the existing elected Constable and received income as such.

Mr. Hilford submitted additional information on three occasions. Two pieces of additional information were received on September 25, 2006. One piece of additional information was received on November 1, 2006. The substance of that information was as follows:

### September 25, 2006 (No. 1)

A summary, prepared by Mr. Hilford, of RFO No. 96-39. The subject of this opinion was a former Las Vegas Constable named Nolen. A review of that opinion revealed underlying issues that were unrelated to the case at hand, the allegation that Mr. Mitchell intentionally failed to report the correct amount of income he receives in the office of Henderson Constable on Financial Disclosure Statements that were filed with the Secretary of State. The Nolen case related to issues such as working less than full time, patronizing nude bars and drinking while on duty.

### September 25, 2006 (No. 2)

This was a copy of an e-mail, sent by former NCOE Executive Director Stacy Jennings, to Dr. Craig Walton, on April 17, 2006, regarding the propriety of Constables holding other employment.

### November 1, 2006

This submission included a letter from Mr. Hilford and a copy of an article from the Las Vegas Review-Journal in which Mr. Mitchell is purported to have acknowledged that, in his capacity of Constable, he earns \$40,000 more yearly than the \$2,300 he indicated on his Financial Disclosure Statements.

## **H. CONCLUSION**

Mr. Mitchell did not list "Henderson Township Constable" under "General Sources of Income" on the Annual FDS he filed with the Secretary of State in January 2006; however, he did list "Henderson Township Constable" under "General Sources of Income" on the Candidate FDS he filed in May 2006.

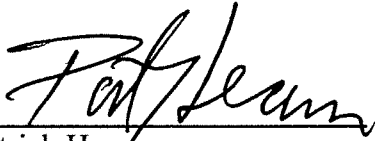
Mr. Mitchell's responses to the notice of additional facts and issues, submitted to him pursuant to NAC 281.189, do not appear to explain the discrepancy between the two filings.

The two items of additional information submitted by Mr. Hilford on September 25, 2006 were not relevant to the allegation that Mr. Mitchell incorrectly reported the amount of income he receives for holding the position of Constable. The additional information received on November 1, 2006 was relevant to the allegation; however, as stated previously, reporting the amount of income received for holding a public officer position is not a requirement of NRS 281.571.

### **I. RECOMMENDATION**

The Executive Director recommends that the Panel find just and sufficient cause **DOES EXIST** for the Nevada Commission on Ethics to hold a hearing and render an opinion as to whether or not Mr. Mitchell violated NRS 281.571(1) (b), by failing to list the income he received from fee revenue, in addition to salary, for the position of Henderson Constable, under "General Sources of Income" on the FDS he filed with the Secretary of State in January 2006.

**Prepared by:**



L. Patrick Hearn  
Executive Director



Date